

DATE 4th June 2019

**(1) WEST SUFFOLK COUNCIL**

**(2) SUFFOLK COUNTY COUNCIL**

**(3) HERRINGSWELL GYM DEVELOPMENT LIMITED**

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**Planning Obligation by Deed of Variation under Section 106  
of the Town and Country Planning Act 1990**

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relating to

**Land at the Gymnasium Building Herringswell Manor**

**Herringswell Road Herringswell**

West Suffolk Council  
West Suffolk House  
Western Way  
Bury St. Edmunds  
Suffolk

**THIS DEED OF VARIATION** is made the 4<sup>th</sup> day of June 2019

## THE PARTIES

1. **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
2. **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
3. **HERRINGSWELL GYM DEVELOPMENT LIMITED** (Company registration number 11178314) of 34 Anyards Road Cobham KT11 2LA (hereinafter called the "**Owner**")

## RECITALS

- A. The Council (formally known as Forest Heath District Council) is the Local Planning Authority for the purposes of the TCPA 1990 for the area within which the Property is situated and is an authority that may enforce the planning obligations herein
- B. The County Council is the Local Education authority and also the Local Library Authority for the area within which the Property is situated as well as a Local Planning Authority for the purposes of the TCPA 1990 and is an authority that may enforce the planning obligations herein
- C. The Owner is the owner of the property comprising of the land registered at HM Land Registry under title number SK390095 ("the **Property**")
- D. On the 12<sup>th</sup> May 2017 an undertaking by deed pursuant to Section 106 of the TCPA 1990 was made by City and Country Residential Limited and Lloyds Bank PLC (Mortgagees) to Forest Heath District Council and Suffolk County Council which was secured by the Planning Inspectorate under reference APP/H3510/W/17/3166628 planning register reference DC/15/0802/FUL (hereinafter called the "**Principal Deed**")
- E. On the 11<sup>th</sup> February 2019 a planning application was submitted on behalf of the Owners which varies the DC/15/0802/FUL permission and the council is resolved to grant planning permission under the reference DC/19/0248/VAR (hereinafter called the "**Variation Permission**")
- F. Without prejudice to the terms of the other covenants contained in the Principal Deed the Parties hereto agree to vary the Principal Deed on such terms as set out herein

**1. DEFINITIONS**

For the purposes of this Deed the words and expressions defined in the Recitals shall have the meanings given to them respectively by the Recitals

**2. INTERPRETATION**

2.1 Words and expressions defined in the Principal Deed shall have the same meanings in this Deed except to the extent that they are expressly varied by this Deed

2.2 Any reference to the "Parties" is a reference to the parties to this Deed

2.3 The Parties do not intend that any of this Deed's terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

**3. VARIATIONS TO THE PRINCIPAL DEED**

3.1 The Parties agree that the Principal Deed shall be varied as set out in this clause but otherwise the Principal Deed shall remain in full force and effect

3.2 Within the agreed terms on pages 2 and 3 at clause 1.1 of the Principal Deed the definitions of "Council" "Development" and "Planning Permission" shall be deleted and replaced with the following definition

"Council"	West Suffolk Council of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
"Development"	The development of the Property described in the Planning Permission
"Planning Permission"	the planning permission granted under reference DC/15/0802/FUL and/or the variation planning permission granted under reference DC/19/0248/VAR

**4. EFFECTIVE DATE**

The amendments to the Principal Deed made by this Deed shall come into effect on the date of the grant of the Variation Permission

## **5. CONTINUATION OF THE PRINCIPAL DEED**

This Deed does not release any party to it from any breaches of the Principal Deed existing at the date of this Deed save where variations contained in this Deed remove the obligation of which the Party is in breach

## **6. AGREEMENTS AND DECLARATIONS**

- 6.1 This Deed is made pursuant to sections 106 and 106A of the Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers
- 6.2 The covenants restrictions and requirements imposed by this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and County Council as local planning authorities against the Owner and their successors in title
- 6.3 This Deed will be registered as a local land charge by the Council
- 6.4 No person or body will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Property or the part of the Property in respect of which such breach occurs but they will remain liable for any breaches of this Deed occurring before that date

## **7. MISCELLANEOUS**

- 7.1 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.2 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities

## **8. LEGAL FEES**

The Owner shall pay to the reasonable legal costs of the Council and the County Council on completion of this Deed incurred in the negotiation preparation and execution of this Deed

**9. JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales

**10. DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

**11. EXECUTION**

The Parties have executed this Deed as a deed and it is delivered on the date set out in this Deed

**THE COMMON SEAL OF** )

**WEST SUFFOLK COUNCIL** )

was affixed in the presence of: )



████████████████████  
Authorised Officer

THE COMMON SEAL OF )

SUFFOLK COUNTY COUNCIL )

was affixed in the presence of: )



Authorised Officer



SIGNED AS A DEED BY )

HERRINGSWELL GYM DEVELOPMENT LIMITED )

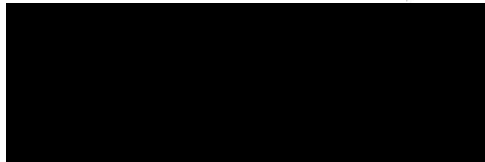
acting by a director in the presence of: )



Signature of witness

Name of witness

Address



Boyes Turner LLP  
Abbots House  
Abbey Street  
Reading RG1 3BD